

IN THE MATTER OF : BEFORE THE
MICHAEL & STACY DIBLASI : HOWARD COUNTY
 : BOARD OF APPEALS
Petitioners : HEARING EXAMINER
 : BA Case No. 06-006V

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DECISION AND ORDER

On March 20 and April 3, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Michael and Stacy Diblasi, Petitioners, for a variance to reduce the 10-foot rear setback to 4 feet for the construction of an addition in an R-MH (Residential – Mobile Home) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the “Zoning Regulations”).

The Petitioners certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioners were not represented by counsel. Michael and Stacy Diblasi and Gerard Anderson testified in support of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The Petitioners are the owners of the subject property, known as 7225 Waterloo Pass, which is located in the 1st Election District on the north side of Waterloo Pass in the New Colony Village mobile home subdivision in Elkridge (the “Property”). The Property is referenced on Tax Map 43, Grid 3 as Parcel 347, Lot 12.

2. The Property is trapezoidal in shape and consists of about 3,243 square feet in area. The Property has about 20.56 feet of frontage on Waterloo Pass. The lot is about 84 feet deep along its western boundary and 68 feet deep along its eastern boundary. The Property widens to the rear (north) where it is about 77 feet wide along the rear lot line.

The Property is improved with a two-story, single-family detached dwelling located about 32.8 feet from Waterloo Pass, 1.9 feet from the east side lot line, 6.2 feet from the west side lot line, and approximately 11.9 feet from the north rear lot line¹. The house fronts on Waterloo Pass and is about 38 feet wide and 27 feet deep.

Access to the Property is gained via a paved driveway that runs from Waterloo Pass to the east side of the house. The topography of the Property is level. An open deck is attached to the rear and northwest portion of the house.

3. The Petitioners propose to construct an 18’ by 8’ enclosed patio room on top of the deck at the rear of their home. The room will be situated about four feet from the rear lot line, resulting in an encroachment of about 6 feet into the 10-foot rear setback required by Section 128.G.3.d(2).

4. Vicinal properties are also zoned R-MH and are residential lots improved with single-family homes. According to the as-built site development plan submitted by the Petitioners (Exhibit 3), while some vicinal properties are larger in size, the Property is equal

or larger in size than many other nearby properties. The Petitioners' home is presently about the same size as other homes in the area.

6. The Petitioners testified that the Property is small and irregular in shape. The Petitioners noted that the entire subdivision contains very small and irregular lots. The Petitioners also argue that the orientation of their home causes a practical difficulty in complying with the rear setback.²

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

1. The standards for variances are contained in Section 130.B.2.a of the Regulations.

That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

¹ The Petitioners' location drawing indicates that the northeast corner of the house is 9.2 feet from the rear lot line and therefore encroaches into the 10' rear setback.

² The Petitioners alternatively argued that no variance is necessary as the proposed unheated patio room is permitted by Section 128.A.1.d. I find that Section 128.A.1.d does not apply in this case because New Colony Village is a "traditional residential neighborhood" subject to the bulk regulations contained in Section 128.G.3.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

For the reasons stated below, I find that the requested variance does not comply with Section 130.B.2.a(1), and therefore must be denied.

2. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. Ap.. 28, 322 A.2d 220 (1974).

With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thusly:

“In the zoning context, the ‘unique’ aspect of a variance requirement *does not refer to the extent of improvements upon the property*, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls.”

North v. St. Mary's County, 99 Md. App. 502, 514, 638 A.2d 1175 (1994)(italics added).

In this case, the Petitioners have not shown that the Property is in any way unique such that the front setback of Section 108.D.4.b(1)(a)(ii) will disproportionately impact it. The Petitioners suggest that the Property is exceptionally small and irregular; however, the evidence is undisputed that the Property is equal or larger in size than many other properties in the neighborhood.

The Petitioners also suggest that the orientation of their home causes a practical difficulty in complying with the rear setback. As stated above, however, I may not consider the location of the improvements on the Property as a unique physical condition of the land for the purposes of the variance requirements. Any practical difficulty must relate to the uniqueness of the land itself, and not to the improvements upon it, including the orientation of the home. I must therefore view the Property as if the house had not been built. The reason for this rule is to prevent a property owner from creating a need for a variance.

Consequently, the Petitioners have not produced sufficient evidence to pass the first prong of the variance test; that is, they have not shown that the Property itself has any unusual or unique characteristic that necessitates the variance requested. For this reason, the variance request fails to comply with Section 130.B.2.a(1).

Conclusion

It is well established in Maryland law that any practical difficulty must relate to the land, and not to the personal convenience of the particular owner of the land. *Cromwell*, id. While it may be desirable for the Petitioners to be able to construct an addition on their Property, it must be accomplished within the restrictions of the Zoning Regulations.

It is not the role of zoning, nor should it be, to accommodate the personal wants or circumstances of each property owner. Rather, the purpose of zoning is to promote the orderly development of land through the imposition of uniform regulations and standards. Variances to these standards are therefore to be sparingly granted, and only under exceptional circumstances. *Cromwell*, 651 A.2d at 430.

Simply put, if I were to grant a variance to these Petitioners to accommodate their personal desires and circumstances, then I must do so for every property owner who is similarly situated. Once granted, a variance is permanent and irreversible. Under such a system, variances would become the rule, and the Zoning Regulations would be rendered meaningless.

The Petitioners in this case have not presented sufficient evidence to show that exceptional circumstances exist to warrant the grant of a variance to the setback requirements. Consequently, I am compelled to deny the request.

ORDER

Based upon the foregoing, it is this **2nd day of May 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Michael and Stacy Diblasi for a variance to reduce the 10-foot rear setback to 4 feet for the construction of an addition in an R-MH (Residential – Mobile Home) Zoning District, is hereby **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.